

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-117
Table of Allotments,)	RM-10928
FM Broadcast Stations.)	
(Madison, Missouri))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 21, 2006

Released: June 23, 2006

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued at the request of American Family Association (“Petitioner”) proposing the reservation of vacant Channel 247C3 at Madison, Missouri for noncommercial educational (“NCE”) use. Petitioner and Starboard Media Foundations, Inc., (“Starboard Media”) filed comments. KIRK, L.L.C (“KIRK”) and Best Broadcasting, Inc. (“Best Broadcasting”) filed opposing comments. For reasons discussed below, we are denying the reservation proposal for vacant Channel 247C3 at Madison, Missouri.

2. **Background.** In the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, the Commission established revised criteria by which a rulemaking proponent may reserve an FM allotment for NCE use.² Under the expanded criteria, a proponent must demonstrate that it is technically precluded from using a reserved channel (Channels 201 through 220) and that the proposal would provide a first and/or second NCE radio service to at least 10 percent of the population within the 1 mV/m (60 dBu) contour of the proposed station, provided that such population would exceed 2,000 persons.³ Initially, this reservation process was limited to future allotment proceedings. The Commission later extended the expanded criteria to existing vacant FM allotments for which a notice of proposed rule making had been released prior to August 7, 2000, the effective date of the *NCE Report and Order*.⁴ In a *NCE Public Notice* released September 30, 2003, we invited petitions for rule making to reserve vacant FM allotments for NCE use pursuant to the *NCE Second Report and Order*.⁵

3. As stated in the *Notice*, the Petitioner filed a proposal requesting the reservation of vacant Channel 247C3 at Madison, Missouri for NCE use. The *Notice* also provided an opportunity for an opposing party to file rebuttal comments identifying a site at which a reserved channel could be assigned

¹ *Madison, Missouri*, Notice of Proposed Rule Making, 19 FCC Rcd 6826 (MB 2004) (“*Notice*”).

² Report and Order, 15 FCC Rcd 7386 (2000) (“*NCE Report and Order*”). Previously, the Commission would only reserve a channel in the non-reserved FM band (Channels 221 through 300) if the petitioner demonstrated that no reserved channel could be used without causing prohibited interference to a Channel 6 TV station or to a foreign allotment.

³ 47 C.F.R. § 73.202(a)(1)(ii).

⁴ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691, 6706 (2003) (“*NCE Second Report and Order*”).

⁵ *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, Public Notice, 18 FCC Rcd 19600 (MB 2003) (“*NCE Public Notice*”).

with facilities fully equivalent to the proposed reserved allotment. Such an alternate reserved channel proposal also must satisfy the first and/or second NCE radio service criterion. Alternatively, a party may file comments demonstrating that the reservation proposal would not, in fact, provide a first and/or second NCE radio service to ten percent of the population within the 1 mV/m (60 dBu) contour of the proposed station.

4. **Comment Summary.** Petitioner filed comments restating its interest in the NCE reservation of vacant Channel 247C3 at Madison, Missouri. Starboard Media filed comments supporting the proposal, stating that it would file an NCE application for vacant Channel 247C3 at Madison, if reserved for NCE use.

5. Best Broadcasting filed comments opposing the NCE reservation request.⁶ It states that vacant Channel 247C3 allotment at Madison is precluded from the NCE reservation procedure because the *Public Notice*⁷ accepting the proposed allotment of Channel 247C3 at Madison as a counterproposal in MM Docket No. 00-129 was issued on December 7, 2000, after the August 7, 2000, effective date of the *NCE Report and Order*. Therefore, Best Broadcasting asserts that the Channel 247C3 allotment at Madison was ineligible for a NCE reservation under the revised reservation criteria.

6. Best Broadcasting also contends that it would be inequitable to deny it an opportunity to bid for Channel 247C3 at Madison in an FM broadcast auction. It notes that it previously stated its expression of interest in the original rulemaking proceeding, which allotted Channel 247C3 at Madison. Moreover, the *Report and Order* in that proceeding announced that the vacant Madison allotment would be auctioned in an FM broadcast auction in accordance with Commission policy. Therefore, Best Broadcasting argues that the Commission should use competitive bidding procedures to award the Channel 247C3 construction permit at Madison.

7. Additionally, Best Broadcasting states that the Petitioner's proposal fails to meet the relaxed reservation standards. In this regard, Best Broadcasting submitted engineering depicting that a NCE station could hypothetically operate on Channel 206 as a Class C3 facility at Madison using maximum facilities. According to Best Broadcasting, the C3 facility would provide a first NCE service to 13,993 persons and a second NCE service to 10,530 persons, representing 83 percent of the population within the station's proposed 60 dBu contour. Moreover, a station operating on Channel 206C3 would not cause any prohibited overlap or cognizable interference to any authorized TV Channel 6 station. Accordingly, Best Broadcasting requests the dismissal of Petitioner's NCE reservation request for vacant Channel 247C3 at Madison.

8. KIRK filed opposing comments, stating that an alternative channel could be utilized in the reserved band from a transmitter site situated in the center of Madison. Moreover, this alternative channel would provide coverage to the required white and gray NCE service areas. Specifically, KIRK submitted an engineering showing demonstrating that Channel 206C3 is available and would provide a first or second NCE service to 12,276 persons (19 percent) of the total population of 63,568 persons. The engineering showing states that the proposed transmitter site for Channel 206C3 would afford full protection to any authorized TV Channel 6 station under the provisions of Section 73.525 of the Commission's rules.⁸

⁶ Best Broadcasting was the original proponent of the Channel 247C3 allotment at Madison in MM Docket No. 00-129.

⁷ *Public Notice*, Report No. 2455 (RM-10017), released December 7, 2000.

⁸ See 47 C.F.R. § 73.525.

9. **Discussion.** Best Broadcasting and KIRK have successfully demonstrated that an alternate channel is available in Madison. A TV Channel 6 preclusion study which may be used to establish that certain FM reserved band channels are unavailable,⁹ is based on Section 73.525 of the Commission's rules.¹⁰ Our engineering study confirms that while a proposed Channel 206C3 would cause interference to Station KMOS-TV, Channel 6, Sedalia, Missouri, the interference area will not exceed the 3,000 person limit permitted under the rule. Moreover, a Channel 206C3 allotment at Madison, utilizing city center reference coordinates would provide a first and/or second NCE service to 27,487 persons (50 percent) of the total population of 55,451 persons. Accordingly, we find that the operation of Channel 206C3 at Madison is available for NCE use at Madison, and thus, reservation is unwarranted.

10. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Report and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A) because the proposed rule was denied.

11. IT IS ORDERED, That the Petition for Rule Making filed by Petitioner IS DENIED.

12. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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⁹ In *Pima, Arizona*, Report and Order, 20 FCC Rcd 11137 (MB 2005), the staff used a different methodology to determine Channel 6 preclusion. The Commission has never approved that methodology and its use is explicitly repudiated.

¹⁰ 47 C.F.R. § 73.525; *see also Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Third Report and Order, 57 RR 2d 107 (1984) *recon. granted in part*, Memorandum Opinion and Order, 58 RR 2d 629 (1985).